88-1464

Supreme Court U.S.
FILED
MAR 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.:

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

STEVEN M. GREENBERG

APPELLANT/RESPONDENT

VS.

THE FLORIDA BAR

APPELLEE/PETITIONER

ON APPEAL FROM THE

SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

STEVEN M. GREENBERG
2450 N.E. MIAMI GARDENS DRIVE
SECOND FLOOR
MIAMI, FL 33180
TELEPHONE: (305) 932-0550

QUESTIONS PRESENTED FOR REVIEW

1.

WHETHER THE FAILURE OF RULE 3-72 OF THE RULES REGULATING THE FLORIDA BAR, AND ITS PREDECESSOR, ARTICLE 11, RULE 11.07 OF THE INTEGRATION RULE OF THE FLORIDA BAR WERE AND ARE UNCONSTITUTIONAL FOR FAILURE TO PROVIDE FOR AN IMMEDIATE POST-SUSPENSION HEARING, AND DENIED THE APPELLANT DUE PROCESS WHERE THE DELAY IN AFFORDING HIM A HEARING RESULTED IN AN ENHANCEMENT AS TO HIM OF THE STANDARD PENALTY FOR A FELONY CONVICTION.

2.

WHETHER THE ACTION OF THE FLORIDA SUPREME COURT IN DISBARRING APPELLANT FOR FIVE YEARS UNDER RULE 3-72 OF THE RULES REGULATING THE FLORIDA BAR, WHEN ANOTHER ATTORNEY WHOSE CASE WAS BEFORE THE COURT AT THE SAME TIME AND WHO WAS CONVICTED OF THE SAME OFFENSES AS APPELLANT WAS DISBARRED FOR A THREE-YEAR PERIOD UNDER THE PRIOR RULE DENIED THE APPELLANT EQUAL PROTECTION OF THE LAW.

LIST OF INTERESTED PARTIES

FLORIDA SUPREME COURT JUSTICES

Raymond Ehrlich, CJ

Ben F. Overton

Parker Lee McDonald

Leander J. Shaw, Jr.

Rosemary Barkett

Stephen H. Grimes

Gerald Kogan

PETITIONER

Steven M. Greenberg, pro se

THE FLORIDA BAR

Randi Klayman Lazarus, Esq.

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OCTOBER TERM, 1988

STEVEN M. GREENBERG

APPELLANT/RESPONDENT

VS.

THE FLORIDA BAR

APPELLEE/PETITIONER

ON APPEAL FROM THE
SUPREME COURT OF FLORIDA

The Appellant, STEVEN M. GREENBERG, appeals the judgment of the Supreme Court of Florida.

OPINIONS BELOW

The Report of Referee which recommended that Appellant be disbarred for three (3) years is reprinted herein. (A 1-16). The opinion of the Supreme Court of Florida which automatically suspended the Appellant is published at 480 So.2d 1284 (Fla.1985). (A 17-19). The Opinion of the Supreme Court of Florida disbarring Appellant for five (5) years is published at 534 So.2d 1142 (Fla.1988). (A 20-24). Rehearing was denied on January 12, 1989. (A 25).

STATEMENT OF JURISDICTIONAL GROUNDS

This appeal is taken from the Supreme Court of Florida, the court of highest jurisdiction in the State of Florida. The Proceeding below was a disbarment proceeding, over which the Supreme Court of Florida has original and exclusive

jurisdiction. On October 20, 1988, the Appellant was disbarred from the practice of law for a period of five (5) years. An Order denying rehearing was rendered on January 12, 1989. A Notice of Appeal to this Court was timely-filed on February 24, 1989.

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1257(2). The United States Supreme Court has exclusive jurisdiction over final judgments of a state court in judicial proceedings. This specifically applies to the appeal of proceedings involving Bar rules and discipline. District Court of Appeals v. Feldman, 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Constitution of the United States, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Integration Rules of the Florida Bar, Article 11; Rule 11.07. (A 30-35).

Rules Regulating the Florida Bar, Rule 3-7.2; Rule 3-7.9. (A 36-).

STATEMENT OF THE CASE

On June 25, 1985, The Appellant, STEVEN M. GREENBERG, was convicted of one count of Conspiracy to Possess Marijuana with intent to Distribute, in violation of Title 21 U.S.C. §§ 841(a)(1) and 846, and Conspiracy to Import Marijuana, in violation of Title 21 U.S.C. §§ 952(a) and 963. Upon notification of the conviction, and pursuant to Article XI, rule 11.07(3) and (4), the Florida Supreme Court immediately suspended him from the practice of law for a period of "not less than three years, effective July 23, 1985 ...." (A 30-35). Under the Integration rules, no hearing of any kind was necessary prior to suspension. This aspect of the procedure is admittedly constitutional. Barry v. Barchi, 443 U.S. 55 (1979); Monty v. Montrym, 443 U.S. 1 (1979).

Formal disbarment proceedings were not commenced until the Florida Bar filed its complaint on February 3, 1987, seventeen months after the effective date of Mr. Greenberg's suspension. Such a delay is permissible under both the Integration Rules of the Florida Bar, and the Rules Regulating the Florida Bar, which supplanted the Integration Rules, effective January 1, 1987.

Neither the prior disciplinary rules, nor the present rules provide for a prompt post-deprivation disposition hearing. In fact, they fail to provide for any post-suspension hearing at all. (A 30-35, 36- This is a manifest constitutional infirmity. At a minimum, proceedings for the disciplining of attorneys must afford procedural due process. Standing Com. on Dis. of United States v. Ross, 735 F.2d 1168 (9th Cir.1984).

In Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1435 (10th Cir.1984) the Court stated: "Razatos asserts an important liberty interest. It is clear that attorney discipline, although designed to protect the public, necessarily imposes a punishment or penalty on a lawyer that entitles him to procedural due process. See, also, In Re Ruffalo, 390 U.S. 544 (1968).

Statutes which allow the seizure of property or suspensions from an occupation or profession without a hearing, and which fail to provide for a prompt post-seizure or post-suspension hearing have been routinely declared unconstitutional. See, e.g. Ciechon v. City of Chicago, 634 F.2d 1055 (7th Cir.1980) (firefighter); Ram v. Heckler, 792 F.2d 444 (4th Cir.1986); (service of a physician as a Medicare provider); Barry v. Barchi, supra.

(racehorse trainer's license); Gershenfeld v. Justices of the Supreme Court, 614 F.Supp. 1419 (D.C.E.D.Pa.1986) (license to practice law). "The guarantee of a prompt dispositional postdeprivation hearing, however, is a critical factor in determining the constitutional validity of the previously invoked interim or temporary deprivation processes." id. at 1424, citing Parratt v. Taylor, 451 U.S. 527 (1981).

In the instant case, the Appellant was not afforded a hearing until June 26, 1987, some 23 months subsequent to the effective date of his suspension. However, the hearing was not authorized under the automatic suspension rule, but was engendered by the Bar's filing of a formal complaint for disbarment against the Appellant. This fails the "prompt disposition" standard of Barchi, supra.

Further, the nearly two-year delay in providing a post-suspension hearing resulted in the Appellant being punished under the Rules which became effective on January 1, 1987, instead of under the prior rules. This materially affected the length of his disbarment, since the new rules mandated a minimum period of five years before Mr. Greenberg could apply for reinstatement. Under the prior rules, the minimum period was three years, and three years was almost routinely afforded as punishment by the Florida Supreme Court for felony convictions.

Although Appellant concedes that a five year disbarment was possible under the old rules, such a lengthy penalty was the exception, rather than the rule. This is especially true because the Appellant had never been disciplined previously, and had an exceptional record of public and pro

bono service. While Appellant can not show that he definitely would have received a shorter period of disbarment, this is not fatal to his constitutional claim. c.f. Miller v. Florida, 96 L.Ed. 351, 361 (1987).

The due process clause "requires provision of a hearing `at a meaningful time.'" Cleveland Board of Education v. Loudermill, 470 U.S. 572 (1985). The Florida Rules permitting immediate suspension without a pre-suspension hearing fail to provide for any post-suspension review. This constitutes a denial of fundamental due process.

The Appellant was disbarred on October 20, 1988, nunc pro tunc to July 25, 1985 for a period of five years. The failure of the rules to provide for post-suspension review was compounded in the instant case by the arbitrary manner in

which the Supreme Court of Florida dealt with cases which were pending during the transition period from the prior rules to the new procedures.

The explanatory note which accompanies the Rules Regulating the Florida Bar provides that:

> All disciplinary cases pending as of 12:01 a.m. January 1, 1987, shall thereafter be processed in accordance with the procedures set forth in the Rules Regulating the Florida Bar.

Hence, under the new rules, a minimum disbarment of five years is mandatory. But the Supreme Court of Florida has not applied the new Rules uniformly.

In The Florida Bar v. Margadonna, 511 So.2d 985 (Fla.1987), Margadonna was convicted in Federal Court of the theft of $145,000.00 which came into his hands as a temporary equity receiver. He was suspended from practice on January 25, 1985.

In ruling on his case, the Court adopted the referee's recommendation that Margadonna be allowed to petition for readmission in November of 1988, when his civil rights were to be restored. Thus, the disbarment period was to last three years and a little over nine months. Implicit in the opinion was the implied possibility that the disbarment period would be shortened if Margadonna's civil rights were restored earlier. The opinion of the Court was rendered on September 3, 1987.

In The Florida Bar v. Newman, 513 So.2d 656 (Fla.1987), Newman was disbarred on September 10, 1987, for numerous violations of the Rules, including failure to properly and diligently pursue legal matters entrusted to his care, misappropriation of client trust funds, inadequate trust record keeping, and a

shortage of $140,000.00 in client trust funds.

Despite the fact that the disbarment proceedings were clearly pending on January 1, 1987, the Court specifically found at 513 So.2d 659, n.3, that Newman should be disciplined under the old rules. He was disbarred for three years.

Finally, in The Florida Bar v. Nahoom, 523 So.2d 1137 (Fla.1988)(A 26-29), the Supreme Court of Florida was faced with a factual situation which was virtually identical to that of the Appellant herein.

Nahoom was convicted in Federal court of the exact same violations of the law as GREENBERG. Nahoom was convicted on April 15, 1985, one month earlier than Appellant.

Nahoom was suspended on May 8, 1985, effective June 3, 1985. GREENBERG was suspended effective July 25, 1985.

Nahoom was disbarred on April 20, 1988. GREENBERG was disbarred October 20, 1988.

Nahoom was disbarred for three years. GREENBERG was disbarred for five years.

This arbitrary and capricious application of the Rules denied the Appellant the equal protection of the law, in violation of his rights under the 14th Amendment.

The due process and equal protection arguments raised herein, were initially raised before the Supreme Court of Florida in GREENBERG's Answer brief. Appellant cited the Newman decision in that brief. The Nahoom decision was cited in GREENBERG's Reply Brief to the Court. The issues were revisited and highlighted in GREENBERG's Motion for Rehearing before the Court.

The issues raised herein are, as the cases cited in this brief illustrate,

ubiquitous. Upon information and belief, the rules extant in many states regulating the conduct of numerous professions, including law, contain provisions similar to that of the State of Florida. Individuals are routinely suspended from a variety of occupations without hearing, and without the opportunity for a hearing "at a meaningful time."

Even the preliminary research Appellant has done for this brief has revealed such denials of due process in proceedings involving attorneys, physicians, firefighters, and others. The statutes and rules reflected the routine passage of such provisions in states such as Illinois, Colorado, New York, Florida, Pennsylvania, Kentucky, New Jersey, and Ohio. Clearly, this appeal raises issues of substantial importance and widespread application.

CONCLUSION

For all of the foregoing reasons, the Court should take jurisdiction of this case, and grant STEVEN M. GREENBERG plenary review.

Respectfully submitted,

S. M. Greenberg

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ALVIN E. ENTIN, ESQ.

PROOF OF SERVICE

COMES NOW, Alvin E. Entin, Esq., on behalf of the Appellant, S T E V E N M . GREENBERG, and states to this Court:

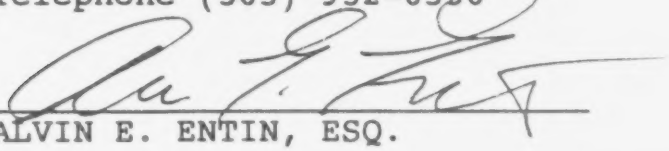
1) That on February 24, 1989, the attached Brief on Jurisdiction submitted on behalf of the Appellant, was mailed at the United States Post Office, Miami, Florida.

2) I certify that three (3) true and accurate copies of the foregoing Brief have been furnished to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, Suite 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131.

3) Said statement is being submitted to this Court pursuant to Rule 28.2 of the Rules of the Supreme Court.

Respectfully submitted,

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ALVIN E. ENTIN, ESQ.

SWORN TO AND SUBSCRIBED before me this

24th day of February, 1989.

NOTARY PUBLIC,
STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV. 6,1989
BONDED THRU GENERAL INS. UND.

APPENDIX

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant,	The Florida Bar File No: 11K87M83
v.	
STEVEN M. GREENBERG, Respondent.	Supreme Court Case No: 69,987

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar (Article XI, Rule 11.06 of the Integration Rule of the Florida Bar), a Final Hearing was held in the offices of The Florida Bar, on June 26, 1987. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record

of the case.

The following attorneys acted as counsel for the parties:

For the Florida Bar:

Randi Klayman Lazarus
Suite 211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent:

John A. Weiss, Esq.
101 North Gadsden Street
Tallahassee, Florida 32302

II. FINDINGS OF FACTS: Respondent admits the allegations contained in the Bar's complaint which I hereby accept and adopt as the findings of fact in this cause, to wit:

1. That Respondent was named as a principal and co-conspirator in a Federal indictment filed in the United States District Court, Northern District of Indiana, Hammond Division in Case No. H-CR-83-36.

2. That the indictment alleged, inter alia, Respondent's complicity and involvement in committing offenses against the United States of America, to wit: conspiracy to import a controlled

substance (marijuana); and conspiracy to distribute and possess with intent to distribute a controlled substance (marijuana); all in violation of Title 21, United States Code, Section 952(a), 963, 841(a)(1) and 846.

3. That on or about June 25, 1985, Respondent was adjudicated guilty after a jury verdict as to one (1) count of conspiracy to import a controlled substance (marijuana) in violation of Title 21, United States Code, Section 952(1) and 963; and one (1) count of conspiracy to distribute a controlled substance (marijuana) in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

4. That Respondent was sentenced to serve two (2) years imprisonment as to each count, said sentences to run concurrently.

III. RECOMMENDATIONS AS TO GUILT: I find Respondent guilty of all violations charged with by The Florida Bar. I find that Respondent has violated Article XI, Rule 11.02(3)(a)(commission of an act contrary to honesty, justice and good morals) and 11.02(3)(b)(commission of a crime) of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102

(A)(3)(illegal conduct involving moral turpitude), 1-102(A)(6)(conduct that adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

In making this finding, I have considered the testimony of all witnesses, argument of counsel, and prevailing case law.

In the last several years Florida has suffered the degenerative effects of drug trafficking. Unfortunately, a number of members of The Florida Bar have fallen victim to the lure of money or the intrigue of involvement. The Florida Supreme Court has addressed the issue of lawyers' involvement in drug activities and consequent felony convictions in The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983).

Respondent was engaged in illegal drug trafficking, a troublesome and serious crime. We have not hesitated in the past to disbar an attorney for similar acts even though a referee recommended less severe discipline. See The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977). Illegal behavior involving moral turpitude "demonstrate(s) an intentional and flagrant disregard for the very laws Respondent is bound to uphold, the well being of the members of society, and the ethical standards applicable to members of the Bar of this State. In re Gorman, 269 Ind. 236, 240, 379 N.E.2d 970, 972 (1978). See also In re Roberson, 429 A.2d 530 (D.C. Ct.App. 1981); In re Thomas, 420 N.E.2d 1237 (Ind. 1981); State ex rel. Oklahoma Bar Association v. Denton, 598 P.2d 663 (Okla. 1979); Muniz v. State, 575 S.W.2d 408 (Tex. Civ. App. 1978). "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws.... argues recreancy to his position and office." Ex Parte Wall 107 U.S. 265, 274, 2 S.Ct. 569, 576, 27 L.Ed. 552 (1883). "The public has a right to expect the most from him who lays the greatest claim to its confidence."

Wilson at 4

It is therefore, my task to view a lawyer who has been convicted of two narcotics felonies in the gravest light. Particularly, considering that as Wilson, supra asserted, "the lawyer is most sacredly bound to uphold the laws."

Mr. Greenberg has presented several witnesses who attested to his activities prior to his conviction and incarceration. All witnesses were credible and impressive. They testified to Mr. Greenberg's formation of a drug prevention crisis hot-line, pro bono activities and general good character. The weight I have afforded to that testimony in terms of mitigation bears no adverse reflection on the witnesses or whether in fact the acts occurred. What causes me great difficulty in assessing the weight of the testimony, particularly relating to counseling potential drug users and/or abusers is the

fact that Mr. Greenberg later became involved, to the point of serving prison time for conspiracy to traffic in marijuana, the very act he sought to discourage. This fact goes a long way toward neutralizing the "mitigating" evidence presented. Furthermore, I am mindful of the principle espoused in The Florida Bar v. Prior, 330 So.2d 697, 702 (Fla. 1976) which provides that "all events in an attorney's life prior to his conviction are in effect, overwhelmed by a felony conviction."

I have had an opportunity to review cases where the Florida Supreme Court has imposed less than a disbarment where an attorney was convicted of a drug related offense. In those cases there was evidence of mitigation which included a personal alcohol or drug problem, or an emotional problem. Recently, in The

Florida Bar v. Jahn, ____So.2d_____ (Fla. 1987)(opinion filed June 25, 1987), the Court imposed a three year suspension on an attorney who was convicted of drug charges. The Court focused on two facts. First, the attorney had a severe chemical dependency problem. Second, the convictions were unrelated to his practice.

In The Florida Bar v. Dietrich, 469 So.2d 1377 (Fla. 1985), Dietrich pled guilty to a felony. He was alcohol dependent. In The Florida Bar v. Carbonaro, 469 So.2d 549 (Fla. 1985), the attorney was convicted of drug charges. He suffered from a personality disorder causing him to be under psychiatric care. In The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), Rosen was convicted of drug charges. He was also severely addicted to cocaine.

In some of the foregoing cases, thecourt does recognize that the attorneys are capable of being rehabilitated by imposing less than a disbarment. Two factors distinguish those cases in which a non-disbarment sanction was imposed from the case before me. First, in each of the former cases, some purported justification for the attorney's conduct is present (e.g., alcohol abuse or psychiatric difficulties). Second, in none of the former cases was the crime committed by a lawyer directly using his law practice.

Does such a view unfairly penalize Respondent for failing to fall personally victim to drugs or alcohol? Clearly not. Those other attorneys had a colorable justification for their abhorrent behavior; their minds were clouded with the poison they used and the need for the means to obtain the poison. Respondent,

however, offers no excuse. His mind wasclear and he knew better. He chose, though, with a full hold of his senses to cross the line.

I am convinced that the following cases imposing disbarment for drug convictions are persuasive and applicable to the instant matter. In The Florida Bar v. Anderson, 482 So.2d 1 (Fla. 1986), Anderson was convicted of knowing importation of hydrochloride into the United States and arrangement for its sale. He was disbarred for a minimum of five years. In The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977), the attorney was disbarred after being convicted of delivery of marijuana. In The Florida Bar v. Ludwig, 465 So.2d 528 (Fla. 1985), Ludwig was convicted of five felony counts of delivery of a controlled substance and one count of grand theft.

Ludwig was disbarred. In The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985), disbarment was ordered where the attorney was found to have participated in a conspiracy to import marijuana into the United States, despite having been acquitted of the criminal charges. In The Florida Bar v. Kline 475 So.2d 1237 (Fla. 1985), Kline was dis-barred after knowingly and unlawfully possessing over 2,000 pounds of cannabis. See also The Florida Bar v. Marks, 492 So.2d 1327 (Fla. 1986).

In concluding the foregoing analysis, the words of the Court in The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985) are applicable and pertinent.

The Bar also argues that the recommended suspension is inadequate given the gravity of respondent's misconduct. In the Bar's view respondent should be disbarred. We agree. Respondent's conduct in attempting to act as a drug procurer is wholly inconsistent with his

professional obligations as a member of the Bar. We appreciate that disbarment is the severest sanction available to us and should not be imposed where less severe punishment would accomplish the desired purpose. The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966). We appreciate also that respondent has served his prison sentence, suffered other personal misfortunes, and appears to be genuinely remorseful. Nevertheless, respondent deliberately set out to engage in illegal drug activity for pecuniary gain. Illegal drug activities are a major blight on our society - nationally, statewide and locally. Necessarily, members of the Bar are brought into contact with illegal activity because of their professional obligations to offer legal assistance to clients accused of wrongdoing. Members of the Bar should be on notice that participation in such activities beyond their professional obligations will be dealt with severely. The conduct of respondent warrants disbarment. The legal profession cannot tolerate such conduct.

Hecker, at 1243

Additionally, Mr. Greenberg's role in the drug conspiracy involved the forming of a corporation, with the knowledge that the corporation was being used to purchase an airplane for drug smugglers and with the knowledge that the principals of the

corporation were using aliases. Further, he alerted members of the conspiracy that they were too "hot" to visit the Bahamas.

It is my strong feeling that the fact that Mr. Greenberg's law practice was used in the conspiracy should be considered as an aggravating circumstance. As support for that position, I have reviewed a decision of our sister state New Jersey. In The Matter of Goldberg, 520 A.2 1147 (N.J. 1987), the attorney was convicted of two felony charges of conspiracy to distribute narcotics. Goldberg's role in the conspiracy in great part employed his skills as an attorney. Mitigating circumstances were presented. They included Goldberg's character in the community, serious financial circumstances, and that his daughter suffered from a serious and degenerative kidney disease. The New Jersey Supreme

Court, however, held that the mitigating factors did not override the seriousness of the aggravating factor of Respondent's criminal behavior.

> It must be emphasized that Respondent actively utilized his professional license and his legal skills as an attorney to violate the law. It is obvious that where, as in this case, an attorney's criminal deeds directly involve his law practice, the misconduct is even more egregious in the disciplinary context.
>
> Goldberg, at 1149

It is for the reasons stated in Goldberg, supra, that cases involving attorneys convicted of felony drug charges which involved their law practice have been disbarred.

Based upon the foregoing, I recommend that Steven Greenberg be disbarred from the practice of law for a period of three years to run retroactively from the date of his felony suspension (July 23, 1985). I have considered the fact that a

disbarment in this State is not permanent. Mr. Greenberg may reapply for admission after the three years have expired.

The Bar urges imposition of a five year disbarment under the Rules Regulating The Florida Bar which became effective January 1, 1987. This disciplinary proceeding was pending long before that date. I recommend that the Court reject the Bar's position that the increased penalty (of a five year disbarment instead of a three year disbarment under the former rules) is merely "procedural" and does not violate ex post facto principles.

In conclusion, I believe that the proposed disposition strikes a balance between fairness to the respondent and the necessity of justice for the public whose trust he violated.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been

reasonably incurred by The Florida Bar.

Referee Level Administrative Charge (Rule 3-7.5(k)(l))	$ 150.00
Final Hearing Transcript (June 26, 1987)	$ 668.55
TOTAL	$ 881.55

Respectfully submitted this 16th day of October, 1987.

/s/
DAVID P. KIRWAN
Referee

THE FLORIDA BAR, Complainant,

v.

STEVEN M. GREENBERG, Respondent.

No. 67552

Supreme Court of Florida.

Nov. 14, 1985.

Rehearing Denied Jan. 30, 1986.

Original Proceeding-The Florida Bar.

John F. Harkness, Jr., Executive Director and John T. Berry, Staff Counsel, Tallahassee, and Robert D. Rosenbloom, Asst. Staff Counsel, Miami, for complainant.

Harris K. Solomon of Brinkley, McNerney & Morgan, Fort Lauderdale, for respondent.

PER CURIAM.

The Florida Bar, pursuant to article XI, rule 11.07, Integration Rule of The Florida Bar, has notified this Court that Steven M. Greenberg, a member of The Florida Bar, has been convicted of a

felony. The supporting documents disclose an adjudication of guilty to one count of conspiracy to import a controlled substance (marijuana) in violation of Title 21, United States Code, sections 952(a) and 963 and a conviction of conspiracy to distribute and to possess with intent to distribute a controlled substance (marijuana) in violation of Title 21, United States Code, sections 841(a)(1) and 846. These convictions occurred in the United States District Court, Northern District of Indiana.

Pursuant to article XI, rule 11.07(3) and (4) of the Integration Rule of the Florida BAr, this Court hereby suspends Steven M. Greenberg from practicing law in Florida for a period of not less than three years, effective July 23, 1985, and thereafter until his civil rights have been reinstated by order of this Court.

Should his conviction be overturned on appeal, this Court will review this order of suspension upon Greenberg's petition.

It is so ordered.

ADKINS, Acting C.J., and OVERTON, McDONALD, EHRLICH and SHAW, JJ., concur.

SUPREME COURT OF FLORIDA

No. 69,987

THE FLORIDA BAR, Complainant,

vs.

STEVEN M. GREENBERG, Respondent.

[October 20, 1988]

PER CURIAM.

This proceeding is before the Court on the petition of The Florida Bar and the cross-petition of Steven Greenberg for review of the referee's report in this disciplinary action. The respondent, Steven Greenberg, was convicted of two felony drug offenses in federal court and, as a result, was suspended by this Court. That conduct is the subject of this proceeding. We have jurisdiction. Art. V, § 15, Fla. Const.

The referee made the following findings

of fact:

1. That Respondent was named as a principal and co-conspirator in a Federal Indictment filed in the United States District Court, Northern District of Indiana, Hammond Division in Case No. H-CR-83-36.

2. That the indictment alleged, inter alia, Respondent's complicity and involvement in committing offenses against the United States of America, to wit: conspiracy to import a controlled substance (marijuana); and conspiracy to distribute and possess with intent to distribute a controlled substance (marijuana); all in violation of Title 21, United States Code, sections 952(a), 963, 841(a)(1) and 846.

3. That on or about June 25, 1985, Respondent was adjudicated guilty after a jury verdict as to one (1) count of conspiracy to import a controlled substance (marijuana) in violation of Title 21, United States Code, sections 952(1) and 963; and one (1) count of conspiracy to distribute a controlled substance (marijuana) in violation of Title 21, United States Code, sections 841(a)(1) and 846.

4. That Respondent was sentenced to serve two (2) years imprisonment as to each count, said sentences to run concurrently.

The referee then made the following disciplinary recommendation:

"[T]hat Steven Greenberg be disbarred from the practice of law for a period of three years to run retroactively from the date of his felony suspension (July 23, 1985). I have considered the fact that a disbarment in this state is not permanent. Mr. Greenberg may reapply for admission after three years have expired.

The Bar urges imposition of a five year disbarment under the Rules Regulating The Florida Bar which became effective January 1, 1987. This disciplinary proceeding was pending long before that date. I recommend that the Court reject that Bar's position . . . .

In conclusion, I believe that the proposed disposition strikes a balance between fairness to the Respondent and the necessity of justice for the public whose trust he violated.

We reject Greenberg's assertion that the discipline should be reduced to suspension. His conduct clearly requires disbarment.

Greenberg was found guilty of criminal acts charged on June 24, 1985, and was suspended by this Court on July 23, 1985. The Bar's complaint and hearing before the referee occurred after the new

rules became effective January 1, 1987. Under rule 3-5.1(f), effective January 1, 1987, a disbarred attorney may seek admission to the Bar after five years have expired. We agree with the Bar that, since Greenberg's case was pending subsequent to January 1, 1987, the rules adopted effective that date, including the five-year provision, apply to this case. We do, however, accept the referee's recommendation that the disbarment be effective nunc pro tunc as of the date of our suspension of the respondent.

Accordingly, we adopt the referee's findings of fact, but modify his recommendation to disbar Steven M. Greenberg from the practice of law in Florida effective July 23, 1985. Under the applicable rules, he may reapply for admission to the Bar five years after that date. Judgment for costs in the amount of

$881.55 is assessed against Greenberg, for which sum let execution issue.

It is so ordered.

EHRLICH, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur



SUPREME COURT OF FLORIDA

Thursday, January 12, 1989

THE FLORIDA BAR,	*	
	*	
Complainant,	*	
	*	
v.	*	CASE NO. 69,987
	*	
STEVEN M. GREENBERG,	*	
	*	
Respondent.	*	
	*	
* * * * * * * * * * * * *		

Upon consideration of the Motion for Reconsideration filed in the above cause by attorney for respondent, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied.

EHRLICH, C.J., OVERTON, McDONALD and GRIMES, JJ., concur
SHAW, BARKETT and KOGAN, JJ., dissent

THE FLORIDA BAR, Complainant,

v.

KERRY J. NAHOOM, Respondent.

No. 67891

Supreme Court of Florida .

April 20, 1988

In disciplinary proceeding, the Supreme Court, approving the referee's report, held that attorney's knowingly, willfully, and intentionally combining, conspiring, confederating, and agreeing with others to possess quantity of marijuana, with intent to distribute and to import into United States from place outside thereof, that results in convictions of violations of federal statutes, warrants disbarment, with permission to apply for readmission in three years.

Ordered accordingly.

PER CURIAM.

This disciplinary proceeding, brought by The Florida Bar against Kerry J. Nahoom, is before the Court for consideration of the referee's report. The referee found and recommended as follows:

> II. Findings Of Fact As To Each Item Of Misconduct Of Which The Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find that between October 1979 and June 1980 the Respondent, KERRY J. NAHOOM, committed felonies of knowingly, willfully and intentionally combining, conspiring, confederating and agreeing with others to possess a quantity of marijuana, with intent to distribute and to import into the United States from a place outside thereof.
>
> The Respondent was indicted by the grand jury on three drug offenses, and tried in the United States District Court, Middle District of Florida, Orlando Division. On March 8, 1985, a jury verdict was returned finding the Respondent guilty in two counts of violating Title 21, United States Code, Section 841(a)(1), 846, 952(a) and 963. On April 15, 1985 the Respondent was adjudged guilty on both counts and sentenced by the Honorable G. Kendall

Sharp. On June 17, 1986 the United States Court of Appeals for the Eleventh Circuit affirmed judgment of convictions [See United States v. Nahoom, 791 F.2d 841 (11th Cir. 1986)]. Under Rule 3-7.2(a)(1), Rules Regulating The Florida Bar, conviction and final action thereon renders further proof of said offenses unnecessary.

III. Recommendations As To Whether Or Not The Respondent Should Be Found Guilty: I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Code of Professional Responsibility, to wit: (a) Integration Rule of The Florida Bar, Article XI, Rule 11.02 (3)(a) for engaging in conduct contrary to honesty, justice and good morals; (b) Disciplinary Rule 1-102(A)(3) for engaging in illegal conduct involving moral turpitude;
(c) Disciplinary Rule 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Disciplinary Rule 1-102(A)(6) for conduct which adversely reflects on his fitness to practice law.

IV. Recommendation As To Disciplinary Measures To Be Applied:
I recommend the Respondent be disbarred from the practice of law. The Florida Bar v. Marks, 492 So.2d 1326 [1327](Fla. 1986);

The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985); and The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977) (Disbarment is the appropriate sanction for a serious drug offense, such as trafficking in marijuana).

Neither party has filed a petition for review. We approve the referee's report.

This court suspended Nahoom on May 8, 1985, effective June 3, 1985. He is hereby disbarred nunc pro tunc June 3, 1985, and may apply for readmission three years from that date.

The costs of this proceeding are taxed against the respondent. Judgment is entered against Kerry J. Nahoom for costs in the amount of $709.10, for which sum let execution issue.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ., concur.

THE FLORIDA BAR

ARTICLE XI. RULES OF DISCIPLINE

The exclusive jurisdiction of the Supreme Court over the discipline of persons admitted to the practice of law shall be administered in the following manner subject to the supervision and review of the Court.

Rule 11.07: Discipline Upon Conviction

(1) Determination or judgment of guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction upon trial or plea of any crime or offense that is a felony under the laws of this state, or under the laws under which any other court making such determination or entering such judgment exercises its jurisdiction, shall be conclusive proof of the guilt of the offense charged for the purposes of these rules. Upon such determination or entry

of such judgment of guilt by any court of this state, the judge or the clerk thereof shall transmit a certified copy of such determination or judgment to the clerk of this Court and to the executive director of The Florida Bar.

(2) Suspension by judgment (Florida). If such judgment of guilt is entered by a court of the State of Florida, the convicted attorney shall stand suspended as a member of The Florida Bar on the eleventh day following the entry of the judgment, unless he shall before that day file a petition with the Supreme Court to modify or terminate such suspension as elsewhere provided. If such petition is filed on or before the tenth day following the entry of the judgment, the suspension will be thereby deferred until entry of an order upon the petition.

(a) Petition to modify or terminate

suspension. At any time after the entry of a judgment of guilt, the convicted attorney may file a petition with the Supreme Court to modify or terminate such suspension and shall serve a copy thereof upon the executive director.

If such petition is filed after the tenth day following the entry of judgment of guilt, the suspension shall remain in effect pending disposition of the petition. An opportunity to respond to the petition and appear at any hearing on the petition shall be afforded to The Florida Bar. Modification or termination of suspension shall be granted only upon a showing of good cause.

(b) Continuation of suspension until final disposition. If an appeal is taken by the convicted attorney from the judgment of the trial court in the criminal proceeding and on review the

cause is remanded for further proceedings, the suspension shall remain in effect until the final disposition of the criminal cause, unless modified or terminated by the Supreme Court as elsewhere provided.

(c) Termination of suspension. Such suspension shall continue until final disposition of the criminal cause unless sooner terminated by order of the Supreme Court as elsewhere provided. A final disposition of the criminal cause resulting in acquittal will terminate the suspension. A final termination of the criminal cause, resulting in a determination or judgment of guilt, shall continue the suspension until expiration of all periods for appeal and rehearing and until after termination of disciplinary proceedings by The Florida Bar as elsewhere provided.

(3) Suspension by judgment (other than by state court). If any such determination or judgment of guilt is entered by any court other than a court of the State of Florida, the convicted attorney shall stand suspended as a member of The Florida Bar on the eleventh day following the filing with the clerk of the Supreme Court of a certified copy of such determination or judgment, accompanied by proof of service of notice of such filing upon the convicted attorney; provided, however, that if the convicted attorney shall, prior to the eleventh day, file a petition with the Supreme Court to modify or terminate the suspension, then the suspension will be deferred until entry of an order upon the petition.

(4) Disciplinary judgment after conviction. If a determination or judgment of guilt of a felony is entered

against a member of The Florida Bar and becomes final without appeal or by affirmance on appeal, such judgment shall be conclusive proof of the guilt of the offense charged. Unless the Supreme Court permits an earlier application for reinstatement, the suspension imposed on the conviction shall, after final conviction, remain in effect for three years and thereafter until civil rights have been restored and until the convicted attorney is reinstated under the rule herein provided for reinstatement, or The Florida Bar may, at any time after final conviction, initiate a disciplinary action against the convicted attorney if deemed advisable.

Amended June 11, 1969, effective June 30, 1969 (225 So.2d 881); May 31, 1982, effective Dec. 1, 1972 (262 So.2d 857); May 24, 1979 (373 So.2d 1).

3-7.2. Procedures upon criminal or professional misconduct; discipline upon determination or judgment of guilt of criminal misconduct

(a) Definitions.

(1) Judgment of guilt. For the purposes of these rules "judgment of guilt" shall include only those cases in which the trial court in the criminal proceeding enters an order adjudicating the respondent guilty of the offense(s) charged.

(2) Determination of guilt. For the purposes of these rules "determination of guilt" shall included only those cases in which the trial court in the criminal proceeding enters and order withholding adjudication of respondent's guilt of the offense(s) charged.

(3) Convicted attorney. For the purposes of these rules "convicted

attorney" shall mean an attorney who has either a determination or judgment of guilt entered by the trial court in the criminal proceeding.

(b) Determination or judgment of guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction upon trial or plea of any crime or offense that is a felony under the laws of this state, or under the laws under which any other court making such determination or entering such judgment exercises its jurisdiction, shall be conclusive proof of the guilt of the offense(s) charged for the purposes of these rules.

(c) Notice of determination or judgment of guilt.

Upon the entry of a determination of judgment of guilt against a member of The Florida Bar by a court of competent

jurisdiction upon trial of or plea to any offense that is a felony under the laws applicable to such court, such convicted attorney shall within thirty (30) days of such determination or judgment notify the executive director of The Florida Bar of such determination or judgment. Notice shall include a copy of the order(s) whereby such determination or judgment was entered.

(d) Notice of determination or judgment of guilt by courts of the State of Florida. If any such determination or judgment is entered by a court of the State of Florida, the judge or clerk thereof shall transmit to the Supreme Court of Florida and the executive director of The Florida Bar a certified copy of the order(s) whereby such determination or judgment was entered.

(e) Suspension by judgment of guilt (felonies). Upon receiving notice that a member of the bar has been determined or adjudicated guilty of a felony, branch staff counsel will file a "Notice of Determination or Judgment of Guilt" in the Supreme Court of Florida. A copy of the judgment shall be attached to the notice. Upon the filing with the Supreme Court of Florida by The Florida Bar and service upon the respondent of a notice of determination or judgment of guilt for offenses that are felonies under applicable law, the respondent shall stand suspended as a member of The Florida Bar on the eleventh day after filing of the notice of determination or judgment of guilt unless he shall, on or before the tenth day after filing of such notice, file a petition to terminate or modify such suspension.

(f) Petition to modify or terminate suspension.

(1) At any time after the filing of a notice of determination or judgment of guilt the respondent may file a petition with the Supreme Court of Florida to modify or terminate such suspension and shall serve a copy thereof upon the executive director.

(2) If such petition is filed on or before the tenth day following the filing of the notice, the suspension will be deferred until entry of an order on the petition.

(3) If such petition is filed after the tenth day following the filing of the notice of judgment of guilt, the suspension shall remain in effect pending disposition of the petition. Modification or termination of the suspension shall be granted only upon a showing of good cause.

(g) **Response to petition to modify or terminate automatic suspension.** The Florida Bar shall be allowed twenty (20) days from the filing of a petition to modify or terminate automatic suspension to respond to the same. Staff counsel will oppose all petitions to modify or withhold an automatic suspension on a notice of determination or judgment of guilt unless the designated reviewer recommends and the executive committee concurs in not opposing such a petition.

(h) **Term of suspension.** Unless the Supreme Court of Florida permits an earlier application for reinstatement, the suspension imposed on the determination or judgment of guilt shall remain in effect for three (3) years and thereafter until civil rights have been restored and until the respondent is reinstated under rule 3-7.9 hereof.

(1) Continuation during appeal. A final termination of the criminal cause resulting in the affirmance of a determination or judgment of guilt shall continue the suspension until expir-ation of all periods for appeal and rehearing.

(2) Continuation of suspension until final disposition. If an appeal is taken by the respondent from the determination or judgment of the trial court in the criminal proceeding, and on review the cause is remanded for further proceedings, the suspension shall remain in effect until the final disposition of the criminal cause unless modified or terminated by the Supreme Court of Florida as elsewhere provided.

(3) Termination of suspension. A final disposition of the criminal cause resulting in acquittal will terminate the suspension.

(i) **Separate disciplinary action.** The Florida Bar may, at any time, initiate separate disciplinary action against the respondent.

(1) Conclusive proof of probable cause. A determination or judgment of guilt, where the offense is a felony under applicable law, shall constitute conclusive proof of probable cause and The Florida Bar may file a complaint with the Supreme Court of Florida, or proceed under rule 3-7.8, without there first having been a separate finding of probable cause.

(2) Determination or judgment of guilt as evidence. A determination or judgment of guilt, whether for charges that are felony or misdemeanor in nature, shall be admissible in disciplinary proceedings under these rules, and in those cases where the underlying criminal charges constitute felony charges,

determinations or judgments of guilt shall, for purposes of these rules, constitute conclusive proof of the criminal offense(s) charged. The failure of a trial court to adjudicate the convicted attorney guilty of the offense(s) charged shall be considered as a matter of mitigation only.

3-7.9. Reinstatement and readmission procedures.

(a) Readmission. A former member who has been disbarred or who has been permitted to resign pending disciplinary proceedings, pursuant to rule 3-7.11, may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Except as might be otherwise provided in these rules, no application for admission may be tendered within five (5) years after the date of disbarment or such longer period as the Court might determine in the disbarment order.